

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition :  
of :  
The Safe Deposit Company of New York : AFFIDAVIT OF MAILING  
for Redetermination of a Deficiency or a Revision :  
of a Determination or a Refund of Corporation :  
Franchise Tax under Article 9A of the Tax Law for :  
the Year 1974.

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State of New York  
County of Albany

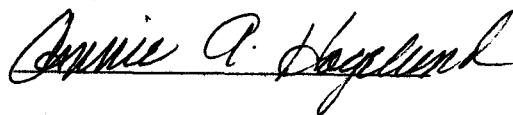
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 23rd day of April, 1982, he served the within notice of Decision by certified mail upon The Safe Deposit Company of New York, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

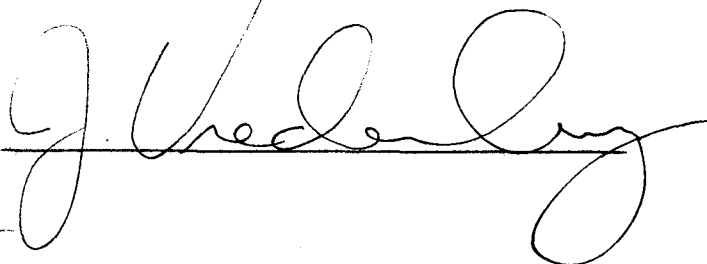
The Safe Deposit Company of New York  
120 Broadway  
New York, NY 10005

and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) under the exclusive care and custody of the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the petitioner herein and that the address set forth on said wrapper is the last known address of the petitioner.

Sworn to before me this  
23rd day of April, 1982.

  
Annie P. Haglund

  
Jay Vredenburg

STATE OF NEW YORK  
STATE TAX COMMISSION

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In the Matter of the Petition :  
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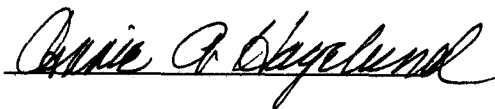
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 23rd day of April, 1982, he served the within notice of Decision by certified mail upon Marvin Kalickstein the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

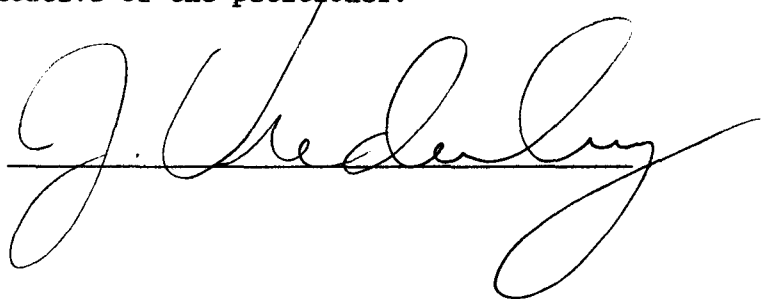
Marvin Kalickstein  
521 Fifth Ave.  
New York, NY 10175

and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) under the exclusive care and custody of the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the representative of the petitioner herein and that the address set forth on said wrapper is the last known address of the representative of the petitioner.

Sworn to before me this  
23rd day of April, 1982.





STATE OF NEW YORK  
STATE TAX COMMISSION  
ALBANY, NEW YORK 12227

April 23, 1981

The Safe Deposit Company of New York  
120 Broadway  
New York, NY 10005

Gentlemen:

Please take notice of the Decision of the State Tax Commission enclosed herewith.

You have now exhausted your right of review at the administrative level. Pursuant to section(s) 1090 of the Tax Law, any proceeding in court to review an adverse decision by the State Tax Commission can only be instituted under Article 78 of the Civil Practice Laws and Rules, and must be commenced in the Supreme Court of the State of New York, Albany County, within 4 months from the date of this notice.

Inquiries concerning the computation of tax due or refund allowed in accordance with this decision may be addressed to:

NYS Dept. Taxation and Finance  
Law Bureau - Litigation Unit  
Albany, New York 12227  
Phone # (518) 457-2070

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative  
Marvin Kalickstein  
521 Fifth Ave.  
New York, NY 10175  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition  
of  
THE SAFE DEPOSIT COMPANY OF NEW YORK  
for Redetermination of a Deficiency or for  
Refund of Corporation Franchise Tax under  
Article 9A of the Tax Law for the Year 1974.

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DECISION  
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Petitioner, The Safe Deposit Company of New York, 120 Broadway, New York, New York 10005, filed a petition for redetermination of a deficiency or for refund of Corporation Franchise Tax under Article 9A of the Tax Law for the year 1974 (File No. 28130).

A formal hearing was held before Arthur Bray, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York on April 28, 1981 at 9:15 A.M. Petitioner appeared by Marvin Kalickstein, C.P.A. The Audit Division appeared by Ralph J. Vecchio, Esq. (Patricia L. Brumbaugh, Esq. of counsel).

ISSUE

Whether petitioner may obtain a refund of Corporation Franchise Tax paid based upon a reallocation of investment income and capital.

FINDINGS OF FACT

1. On or before March 15, 1975 petitioner filed a Corporation Franchise Tax Report for the 1974 calendar year upon which petitioner reported and paid a tax of \$2,585.98.

2. On October 26, 1977 petitioner filed a "REPORT OF CHANGE IN TAXABLE INCOME BY U.S. TREASURY DEPARTMENT" for the 1974 calendar year which reported an increase in petitioners' Federal taxable income. On this date petitioner

paid tax of \$638.24 plus interest of \$140.14 for a total of \$778.38 based upon the increase in Federal taxable income.

3. On September 14, 1979 petitioner filed a claim for a refund of corporation franchise tax paid for the 1974 calendar year in the amount of \$693.00 plus interest. Attached to this claim for refund was an amended corporation franchise tax report for the 1974 calendar year which recomputed the allocation of investment income and capital.

4. In a letter dated October 29, 1979 petitioner was advised that the claim for a refund was denied on the ground that it was not timely filed.

5. On December 26, 1979 petitioner filed a petition asserting, inter alia, that it was error to deny the claim for the refund since the refund was requested within two years of the date when the tax was paid.

#### CONCLUSIONS OF LAW

A. That Tax Law §1087(a) provides in part:

"Claim for credit or refund of an overpayment of tax under article... nine-a...shall be filed by the taxpayer within three years from the time the return was filed or two years from the time the tax was paid, whichever of such periods expires the later, or if no return was filed within two years from the time the tax was paid.

\* \* \*

For special restriction in a proceeding on a claim for refund of tax paid pursuant to an assessment made as a result of (i) a net operating loss carryback, or (ii) an increase in federal taxable income or federal tax, or (iii) a federal change or correction or renegotiation, or computation or recomputation of tax, which is treated in the same manner as if it were a deficiency for federal income tax purposes, see paragraph (7) of subsection (c) of section one thousand eighty-three."

B. That Tax Law §1083(c)(7) provides in part:

"No change of the allocation of income or capital upon which the taxpayer's return (or any additional assessment) was based shall be made where an assessment of tax is made during the additional period of limitation under...paragraph (3)...; and where any such assessment has been made, or where a notice of deficiency has been mailed to the

taxpayer on the basis of any such proposed assessment, no change of the allocation of income or capital shall be made in a proceeding on the taxpayer's claim for refund of such assessment or on the taxpayer's petition for redetermination of such deficiency."

C. That petitioner, The Safe Deposit Company of New York, may not file a claim for refund based upon a reallocation of investment income and capital within the extended period of limitation provided for by Tax Law section 1087(a) (Tax Law §1083[c][7]).

D. That the petition of the Safe Deposit Company of New York is hereby denied.

DATED: Albany, New York

APR 23 1982

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER